



Policy Brief

The Relentless Push to Create an “International Right” to Abortion

Since 1994, abortion advocates have attempted to establish a broad international human right to abortion on demand. What they got instead, through heated negotiations during the United Nations International Conference on Population and Development (ICPD), is a prohibition on promoting abortion for family planning and encouragement by the United Nations body to avoid abortion altogether, especially unsafe abortions performed to save the mother.

1. UN Consensus Language Clearly Limits “Abortion Rights”

The Convention on the Rights of the Child (CRC) states: “**The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. . . .**” (CRC Preamble) This protection is based on “State Parties recogniz[ing] that every child has the inherent right to life.” (CRC Art. 6) The notion that a child is entitled to legal protection before birth, rooted now in a binding 1989 CRC treaty (even if only preamble language), first appeared in a non-binding resolution drafted by the UN Commission on Human Rights and adopted by the UN General Assembly on 20 November 1959. It is evidence of the intent of UN Member States.

In 1994, the International Conference on Population and Development (ICPD) outcome document instructed that “**Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning. . . .**” (ICPD, 1994, par. 7.24; see also par. 7.10, 8.25) UN Member States also clarified that “*Any measures or changes related to abortion within the health care system can only be determined at the national or local level according to the national legislative process.*” (ICPD, par. 8.25; ICPD+5, par. 63-i)

A year later, despite strong pro-abortion voices at the UN, very similar language was negotiated and agreed to at the Fourth World Conference on Women. (See Beijing 1995, par. 106-k) The ICPD language prohibiting abortion as a method of family planning reappeared again in other UN consensus documents five years after the original ICPD, and once more five years after the Fourth World Conference on Women. (See ICPD + 5, par. 63i, ii, iii and Beijing +5, par. 72-o.)

The above references found in various binding UN documents make it very clear there is no international right to abortion on demand. Quite the contrary. These multiple references indicate without ambiguity that **Member States have agreed to help women avoid abortion and UN agencies are prohibited from promoting it as a method of family planning.** They also note that the UN is not authorized to even promote the concept of abortion, as this matter is to be left to national legislatures.

The picture on international abortion rights could not be more clear.

UN consensus language also recognizes that abortion is permitted in a number of UN Member States “under varying legal conditions to save the life of a woman.” (See, e.g., ICPD par. 8.19.) This reality is not inconsistent, however, with the strong UN mandate to avoid promoting abortion as a method of family planning, reduce recourse to its use, and rely on it only in extenuating circumstances such as to preserve the life of the mother. Indeed, as UN Member States noted: “**All Governments and relevant intergovernmental and non-governmental organizations are urged** to strengthen their commitment to women’s health, to deal with the health impact of unsafe abortion as a major public health concern and to

reduce the recourse to abortion through expanded and improved family planning services.” (ICPD par. 8.25)

2. Abortion Advocates Cloud the Issue by Twisting the Meaning of Other UN Language

Abortion advocates have not backed down, despite clear UN consensus language that provides protection to unborn babies and prohibits UN agencies from promoting abortion as a family planning method. In 1996, a coalition consisting of certain non-governmental organizations or NGOs (such as International Planned Parenthood), UN agencies (such the UN Population Fund or UNFPA and the Office of the High Commissioner for Human Rights or OHCHR), and other likeminded entities met in Glen Cove, New York. Their main purpose was to develop and implement a revolutionary strategy to establish a broad international right to abortion that was not achieved in the ICPD and Beijing Platform conferences. They would include abortion rights as part of “sexual and reproductive” health issues for women so that the strategy would be more palatable to others.¹

In 2003, UNFPA and OHCHR hosted a follow-up meeting to the Glen Cove event that “established progress, assessed obstacles and identified opportunities in integrating *sexual and reproductive health* issues into the work of the treaty bodies. . . .”² As there was, and still is, no international consensus to establish a broad right to abortion, the Coalition planned to accomplish their objective in incremental steps by broadly defining universally accepted norms such as the right to “life,” “health” and “liberty” to include elastic concepts like “sexual and reproductive health” and “health services” that already were used in existing treaties. The Coalition would then coordinate with likeminded UN officials on treaty monitoring bodies³ to define those elastic concepts in their reports to include a broad international right to abortion that is not based on any UN consensus documents.

So began the game of interpreting vague UN consensus language in ways never intended, and often in direct opposition to what UN members had agreed to previously. For example, in 1996, the Glen Cove Coalition mapped out how HRC would interpret the International Covenant on Civil and Political Rights. They unilaterally decided, “*The right to freedom of expression and to seek, receive, and impart information (article 19, ICCPR) protects the freedom of women of all ages to receive and impart information about health services, including contraception and abortion.*”⁴

Ironically, neither “abortion” nor “health services” are mentioned in the International Covenant on Civil and Political Rights (ICCPR). To be clear, the similar words “health care services” are used in Article 12 of the Convention on the Elimination of Discrimination Against Women (CEDAW), which specifies that: “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure . . . access to health care services, including those related to family planning.”⁵ Like the ICCPR, however, abortion is not mentioned at all in CEDAW and for good reason.

Many UN Member States then and now oppose the legalization of abortion. And even though abortion is not to be promoted as a method of family planning per the ICPD and Beijing outcome documents, the CEDAW Committee has pressured 66 nations to legalize, remove penalties for, or increase access to abortion.⁶ In other words, the UN CEDAW Committee is attempting to invent a “right” to abortion by deliberately misinterpreting the treaty they are tasked with monitoring, and it has instructed countries to liberalize their abortion laws under threat that if they don’t do that, they will be out of step with the Committee’s misguided interpretation of CEDAW.

This was a clever plan which has worked to convince a number of countries to legalize abortion.

The ICPD document also contains a similar elastic concept regarding “reproductive health” that is tied to specific limits on abortion. Paragraph 7.6 of that treaty notes that “All countries should strive to make

accessible . . . *reproductive health* to all individuals of appropriate ages as soon as possible,” which should include “family-planning counseling, information, education . . . [and] *abortion as specified in paragraph 8.25, including prevention of abortion* and the management of the consequences of abortion. . . .” Although abortion is mentioned in paragraph 7.6, it is done only in the context of paragraph 8.25 of the ICPD, which makes it clear that “*in no case should abortion be promoted as a method of family planning.*”

In brief, nothing in CEDAW, ICPD, ICCPR or any other UN consensus document supports the Glen Cove Coalition’s attempts to claim an international human right to abortion on demand based on terms such as “sexual and reproductive health” and “health care services.” So, the Glen Cove Coalition and other abortion advocates decided they would produce other documents to try to help them redefine those terms over time to include broad abortion rights.

3. The use of NGO Reports and Guidelines from Self-Proclaimed Experts

Since many UN Member States are against a broad international right to abortion, those in favor of such a right look for support outside of the UN negotiation process. One way of providing that support is to get NGOs to develop reports falsely claiming that international law already establishes broad abortion rights. UN treaty monitoring bodies can then use these reports to justify both their interpretations of the treaties they are supposed to implement and their recommendations to Member States that are out of compliance with the monitoring bodies’ activist interpretations.

For example, the Glen Cove Report states that one way to secure “acceptance of reproductive rights, *including abortion*, as international human rights” is to prepare and publish reports on the status of those rights that “shadow” (and typically criticize) government reports to UN treaty monitoring bodies. The monitoring bodies use the reports they receive to issue recommendations to governments concerning actions they should take to comply with their treaty obligation.⁷

Another mechanism is for NGOs to intervene in litigation and cite treaty monitoring body recommendations which these same NGOs may have helped to develop through their shadow reports. They present these UN committee recommendations, based on flawed interpretations of treaties, as binding obligations of Member States. These flawed interpretations are then used to influence national court decisions to advance abortion rights. For example,

- In 2006, the Center for Reproductive Rights (or CRR, a powerful U.S. based NGO dedicated to promoting abortion) used an HRC finding in a case involving a Peruvian woman who was denied an abortion by state officials⁸ to persuade Colombia’s constitutional court to overturn that country’s pro-life law. CRR claimed that by ratifying UN treaties, a sovereign nation must ensure its domestic laws are consistent with subsequent treaty body interpretations of its “evolving” obligations. The constitutional court concluded that it was bound by “the recommendations made by the international authorities in charge of overseeing compliance [with CEDAW]” by Colombia.⁹
- And in 2008, Amnesty International (AI) asked the Supreme Court of Mexico to uphold a liberal abortion law adopted by Mexico City’s legislature and challenged by Mexico’s Attorney General, claiming that several treaties signed by Mexico (for example, CEDAW which does not mention abortion) required the Court to uphold the legislation. AI’s submission could not cite to any treaty language in support of its arguments that a failure to uphold the challenged law would “result in violations of Mexico’s international human rights obligations.” Instead, the AI brief referenced a report by the UN Committee on Economic, Social and Cultural Rights, a treaty monitoring body which pressured the Mexican government on abortion in 2006.¹⁰

With such help from likeminded NGOs, the UN committee responsible for monitoring compliance with CEDAW magically found a way to interpret the words “health care services” in Article 12 of that treaty to require the general decriminalization of abortion, which potentially paves the way to a broad right to abortion. Indeed, the Committee’s Recommendation No. 24 states that, “when possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.” The Recommendation further warns that states “must also put in place a system that ensures effective judicial action. Failure to do so will constitute a violation of [CEDAW] article 12.”¹¹ Yet as noted earlier, article 12 of CEDAW does not even mention abortion.

It is remarkable that UN treaty monitoring bodies made up of unaccountable individuals take it upon themselves to reinterpret unambiguous treaty language, and then pressure governments to comply with their non-binding recommendations.

Abortion advocates understand that the more reports created (official or unofficial) and other materials developed which claim an international right to abortion on demand exist, the less attention will be paid to UN consensus language that actually asserts the opposite. For instance, International Planned Parenthood (an original member of the Glen Cove Coalition) has been distributing a brochure to children worldwide informing them that the Convention on the Rights of the Child (CRC) has established for them an international right to abortion. The brochure states that the CRC’s “right to health” includes the right to “visit a doctor or nurse to receive the full range of *sexual and reproductive health services that are available and legal in your country, including contraceptives [and] abortion services*. . . .”¹² The CRC, however, does not mention either “reproductive health services” or “abortion” in any of its provisions. In fact, as mentioned earlier, the CRC states that children should be provided “*appropriate legal protection, before as well as after birth*. . . .” (CRC Preamble).

In addition to NGO claims and reports, abortion advocates also fund other reports or guidelines from self proclaimed “experts” that support their position. They then seek to have their reports or guidelines endorsed by a sympathetic UN office, and their content incorporated by reference into a UN resolution or declaration that simply “takes note” of them. In many cases UN delegates do not have time to look up every paper cross referenced or mentioned in an outcome documents under negotiation. So attempts have been made to persuade UN delegates to endorse or “take note of” other documents with innocuous titles that run counter to their country’s positions.

This is exactly what sexual rights activists have tried to do with the International Guidelines on HIV/AIDS and Human Rights. These Guidelines, developed by human rights and AIDS activists, were adopted by UNAIDS and OHCHR in 1996—but *not through the UN consensus process*. The Guidelines seek to establish a “right” to abortion on demand as well as the “right” to same-sex marriage, prostitution, and to “men having sex with men.”¹³ These Guidelines were rejected by the 2001 Special Session of the UN General Assembly on HIV/AIDS, did not become part of the UN Declaration on HIV/AIDS, and are thus not UN consensus language.¹⁴ They were rejected on two other occasions when proposed in resolutions at the 53rd and 54th session of the Commission on the Status of Women in 2008 and 2009, respectively.

4. Over Emphasizing the Dangers of Childbirth to Advance Abortion Rights

Contrary to the prohibition in the ICPD and Beijing documents on promoting abortion as a means of family planning, most abortions in the world are still being performed for family planning purposes, and not to avoid serious health issues. In fact, only a small percentage of abortions are performed to save the life of the mother or fetus or for cases of rape and incest.¹⁵ So in the last few years, to advance their cause, abortion advocates also have been claiming that normal childbirth is the most dangerous moment in a woman’s life. Thus, as part of a mother’s right to “life,” they argue that adequate abortion services must be made widely available. What they fail to recognize is that abortion has numerous health risks and complications, and what

pregnant women really need is basic and emergency obstetric care, not abortion.

This argument – that giving birth is too great a health risk for women – most likely will be made in conjunction with Millennium Development Goal #5 to improve maternal health, which requires universal access to “reproductive health” by 2015. These words mean “all matters relating to the reproductive system and its functions and processes.”¹⁶ (Naturally, abortion advocates are seeking to have the UN interpret these words to include a broad right to abortion.)

As part of the goal of improving maternal health, pro abortion advocates also promote what they call “safe” abortions, rather than reducing abortions in the first place. (They consider legal abortions to be safe and illegal abortions to be unsafe, regardless of the quality of medical care given.) This ignores the many serious, well documented physical and psychological consequences to mothers that occur all too often as a result of so called “safe” or legal abortions, and the lives of innocent babies extinguished in the process.¹⁷

UN consensus language makes clear that the dual goals of (i) avoiding abortion as a method for family planning and (ii) ensuring safe abortions that must be performed to preserve the mother’s life are not mutually exclusive. Note the following language in the outcome document of Beijing +5: “While some measures have been taken in some countries, **the actions contained in paragraph 106j and 106k of the Platform for Action regarding the health impact of unsafe abortion and the need to reduce recourse to abortion have not been fully implemented.**” (Beijing +5, par. 12) Although prematurely delivering the baby to save the mother’s life may inadvertently result in the death of the baby, there is never a valid medical reason to deliberately kill a baby while extracting it from the womb to save the mother’s life.

Conclusion

Simply put, there is no international right to abortion on demand because too many UN Member States are strongly opposed to establishing such a right. On the contrary, UN consensus language indicates that **Member States have agreed to help women avoid abortion and UN agencies are prohibited from promoting abortion as a method of family planning.**

Yet, since 1996 UN agencies have worked with activist NGOs and sympathetic members of treaty monitoring bodies (i) to misinterpret UN consensus language in ways that run counter to the positions of UN Member States in a stealth attempt to establish a broad right to abortion, and (ii) pressure countries to legalize abortion.

While various UN Member States have made reservations to provisions of documents that use vague terms like “reproductive rights,” indicating that for them such terms do not mean abortion, they also should instruct UN treaty monitoring bodies to cease misinterpreting treaties in an attempt to establish an international “right” to abortion and/or other controversial sexual “rights” opposed by many UN Member States. Otherwise, those bodies will continue to pressure countries to change their laws based on recommendations not grounded in UN treaty obligations.

Endnotes

1. See generally UN Population Fund, UN High Commissioner for Human Rights, and UN Division for the Advancement of Women, “Summary of proceedings and recommendations,” *Roundtable of Human Rights Treaty Bodies on Human Rights Approaches to Women’s Health, with a Focus on Sexual and Reproductive Health Rights, Glen Cove Report* (December 9–11, 1996) [hereinafter “Roundtable Report”]. The research for this second subsection of the paper originally was taken largely from Douglas Sylva, Ph.D. and Susan Yoshihara, Ph.D., *Rights by Stealth*, The Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion, Catholic Family and Human Rights Institute, No. 8. Family Watch International highly recommends that pro-family UN delegates familiarize themselves with the *Rights by Stealth* publication.

2. "Towards implementing a rights-based approach within UNFPA," Report presented to the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, Stamford, UNFPA (5-7 May 2003), p. 4 (emphasis added).
3. According to *Rights by Stealth*, their primary targets were the monitoring bodies for the Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and International Covenant on Civil and Political Rights (ICCPR).
4. Roundtable Report, p. 23 (emphasis added); see also *ibid.* p. 22 (right to life "could be extended to . . . strict abortion laws which lead women to seek unsafe abortions. . .").
5. General Assembly, 34th Session, "Convention on the Elimination of All Forms of Discrimination against Women," December 18, 1979 (A/RES/34/180), Article 12.
6. Included are countries in Africa (17), Latin America (20), the Caribbean (4), Asia (13), Europe (4), the Middle East (4), and the Pacific (4). These statistics were derived from research done by Thomas Jacobson, UN representative of Focus on the Family, www.focusonthefamily.com.
7. Roundtable Report, p. 10 (emphasis added); see also *supra* note 6. NGO, the International Gay and Lesbian Human Rights Commission (IGLHRC), has even published an extensive manual on how to craft effective shadow reports and lobby CEDAW committee members for gay and lesbian rights. IGLHRC notes: "The submission of shadow reports by local activists . . . has also resulted in specific references to discrimination on the basis of sexual orientation in CEDAW's Concluding Observations, which constitute the Committee's final recommendations to particular states about how to further equality for all women." "Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW," IGLHRC, p. 10; available: <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/945.html>.
8. See Human Rights Committee, Eighty-fifth Session, "Views," November 22, 2005 (CCPR/C/85/D/1153/2003) (emphasis added).
9. An English summary of the opinion is available on www.womenslinkworldwide.org.
10. Piero A. Tozzi & Juan Perez, Amnesty International Pushes Mexican High Court to Uphold Legal Abortion, Volume 11, Number 29 (July 3, 2008); available: http://www.c-fam.org/publications/id.629/pub_detail.asp.
11. CEDAW, 20th Session, General Recommendations 24 (1999); available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.
12. International Planned Parenthood Federation, "Young Person's Guide to the UN Convention on the Rights of the Child and Sexual and Reproductive Health and Rights" (London: IPPF, 2002), quoted in *Rights by Stealth*.
13. International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version (UNAIDS/OHCHR), p. 30, 35, 36, 96, 136 [hereinafter "Guidelines"]. Family Watch International has published a detailed policy brief on the HIV/AIDS Guidelines that is available at <http://www.familywachinternational.org/fwi/resources.cfm>.
14. See Richard G. Wilkins, International AIDS Guidelines and Their Implications for Traditional Morality and Religious Liberty, contained in Susan Roylance, *Defending Marriage and Family* (2004), p. 93 (citations omitted).
15. One study found that only 21% of the women interviewed who chose to have an abortion did so due to rape or health reasons. The other 79% were performed for family planning purposes. A. Torres & J. Forrest, "Why do Women Perform Abortions," *Family Planning Perspectives*, Vol. 20, No. 4 (Jul. – Aug. 1988), pp. 169-176. An earlier study had similar findings. See L. Finer, et. al, "Reasons Women Have Abortions: Quantitative and Qualitative Perspectives," *Perspectives on Sexual and Reproductive Health*, 2005, 37(3):110-18.
16. See <http://www.who.int/reproductivehealth/topics/mdgs/en/index.html>.
17. See Family Watch International Policy Brief on Abortion Consequences, available: <http://www.familywachinternational.org/fwi/resources.cfm>.